STATE OF NEW MEXICO COUNTY OF OTERO TWELFTH JUDICIAL DISTRICT FILED
12th JUDICIAL DISTRICT COURT
Otero County
4/21/2020 5:03 PM
KATINA WATSON
CLERK OF THE COURT
Serena Counts

JEFF SWANSON,

Plaintiff,

v.

Civ. No. D-1215-CV-2020-00373 Schneider, Angie K.

COUY GRIFFIN, Otero County Commissioner in his individual capacity acting under the color of law, and SYLVIA TILLBROOK, Otero County Records Custodian,

Defendants.

COMPLAINT TO RECOVER DAMAGES DUE TO DEPRIVATION OF CIVIL RIGHTS VIOLATIONS OF THE UNITED STATES AND NEW MEXICO CONSTITUTIONS AND FOR VIOLATIONS OF THE NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT

Plaintiffs bring this action to recover damages for violations of their civil rights pursuant to 42 U.S.C. 1983 and for retaliation and harassment under the color of law with the intent to bring harm and for violations of the New Mexico Inspection of Public Records Act;

INTRODUCTION/STATEMENT OF THE CASE

Plaintiff is a citizen advocate watchdog residing in Otero County, New Mexico. In that role Mr. Swanson is a vocal proponent of government transparency and accountability and has at times expressed criticism of Defendant Commissioner Coup Griffin's actions as an Otero County Commissioner. Commissioner Griffin has responded to such criticism from Mr. Swanson and other constituents expressing concern with hostility and unprofessionalism. That hostility lead to the retaliation of Commissioner Griffin blocking Mr. Swanson and many other constituent citizens from Commissioner Griffin's Facebook page where he discussed public business concerning Otero County. Recently, following a County Commission meeting, Cmr. Griffin posted a discussion of that meeting on his Facebook page; Mr. Swanson was alerted to this posting by others but was

unable to see the posting about public business because he was blocked by Cmr. Griffin. Mr. Swanson arranged to have undersigned counsel request these public records about Otero County's public business from Otero County pursuant to the New Mexico Inspection of Public Records Act (IPRA). Mr. Swanson received some of the requested records, which included a list of citizens blocked from Cmr. Griffin's Facebook page where he has commonly discussed the public business of Otero County.

PARTIES

- 1. Plaintiff Jeff Swanson is a resident of Otero County, NM.
- 2. Defendant Couy Griffin is an elected county commissioner for Otero County.
- 3. Defendant Sylvia Tillbrook is the records custodian for Otero County.

JURISDICTION AND VENUE

- 4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the Parties pursuant to the New Mexico Constitution and the NMSA §14-2-1 *et seq*.
 - 5. Venue lies in this district as Plaintiff Jeff Swanson is a resident of Otero County.

FACTUAL BACKGROUND

- 6. Defendant Couy Griffin, likely sometime in 2019 or before blocked Plaintiff Jeff Swanson from access to his Facebook page where he discussed the public business of Otero County with constituents. *See* Exhibit 1.
- 7. Plaintiff directed undersigned counsel to request certain public records regarding Defendant Griffin's Facebook on March 29, 2020 . *See* Exhibit 2 attached hereto.
- 8. Sometime between March 29, 2020 and April 16, 2020 Defendant Griffin undertook to destroy the requested records by deleting them from his Facebook page out of retaliation and to avoid his responsibility for transparency. However, a large number of posts about

the public business of Otero County continued to exist on April 16, 2020 and were preserved by Plaintiff's counsel. *See* Exhibit 3 attached hereto.

- 9. On April 14, 2020, legal counsel for Otero County, Michael Eshleman, responded on behalf of Defendants to inform Plaintiff's counsel that there were no records responsive to Plaintiff's request other than to provide the list of blocked constituents. *See* Exhibit 2.
- 10. The individual actions of Defendant Griffin, acting under the color of law, to destroy public records, withhold other public records and to block Plaintiff from his Facebook page where public business was discussed with constituents were maliciously done for the purpose of retaliating against Plaintiff for his exercise of his First Amendment right to petition his government for redress of grievances and to engage in protected speech that was critical of one of his elected government officials.
- 11. Defendant Griffin's action to block Plaintiff, because of his viewpoint, from a public forum where Defendant Griffin was discussing public business with the general public, was viewpoint discrimination. *See Knight First Amendment Institute at Columbia University v. Trump*, 302 F.Supp.3d 541 (S.D.N.Y. 2018)

FIRST CAUSE OF ACTION: VIOLATION OF FIRST AMENDMENT RIGHTS BY DEFENDANTS – FIRST AMENDMENT RETALIATION AND VIEWPOINT DISCRIMINATION

- 12. Plaintiffs re-allege each of the above paragraphs as if fully set forth herein.
- 13. The First Amendment of the United States Constitution protects an individual's freedom of expression/freedom of speech and the individual's right to petition their government for redress.
- 14. As a government actor, individually, acting under the color of law, Cmr. Griffin maliciously violated the First Amendment rights of Plaintiff through retaliation to withhold and destroy public records and through viewpoint discrimination by blocking Plaintiff from a public

3

forum where Defendant Griffin was discussing the public business appurtenant to his elected position.

- 15. As a direct and proximate result of the retaliatory actions, Plaintiff suffered injuries consisting of deprivation of a Constitutional Right.
 - 16. Defendant Griffin is also subject to punitive damages for his conduct.

SECOND CAUSE OF ACTION: VIOLATION OF INSPECTION OF PUBLIC RECORDS ACT BY DEFENDANT MONTOYA

- 17. Plaintiff re-alleges each of the above paragraphs as if fully set forth herein.
- 18. Pursuant to NMSA 1978 § 14-2-11 Defendants have violated the New Mexico Inspection of Public Records Act by failing to respond or provide for inspection the requested public records.
- 19. Because Defendants have violated the IPRA by failing to produce to Plaintiff the public records requested by Plaintiff without justification under the law, Plaintiff is entitled to an injunction ordering the Defendants to produce all relevant documents in the Defendants' possession including those that may be retrieved after being unlawfully deleted by Cmr. Griffin.
- 20. Pursuant to NMSA 1978 § 14-2-11 Plaintiff is entitled to statutory damages, attorney's fees, and costs for the failure of the Defendants to follow IPRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court exercise its jurisdiction and enter, pursuant to the Court's original jurisdiction, and the New Mexico Inspection of Public Records Act:

- A. A trial on the merits before a jury;
- B. A declaration that the actions of identified Defendants described in this Complaint violated Plaintiff's First Amendment Rights by interfering with his protected speech

and interfering with his right to petition his government for redress;

C. General and specific compensatory damages according to proof;

D. Punitive damages in such amount as will sufficiently punish defendants for their willful

and malicious conduct and as will serve as an example to prevent a repetition of such

conduct in the future;

E. Interest on such damages awarded at the legal rate from the date of judgment until paid;

F. An order granting Plaintiff's costs and attorney fees pursuant to 42 USC §1988;

G. A finding adjudicating that the failure of the Defendants to timely respond or provide

the public records requested by Plaintiff is in violation of the New Mexico Inspection of

Public Records Act, or if necessary, a writ of mandamus requiring the Defendants to

produce the requested records;

H. Judgment in favor of Plaintiff on Defendants' violation of the Inspection of Public

Record Act;

I. An injunction to enforce the provisions of the New Mexico Inspection of Public

Records Act;

J. An Order awarding Plaintiff statutory damages for violation of the Inspection of Public

Records Act;

K. Any and all other relief that may be appropriate as deemed by this Court.

Respectfully submitted this 21st day of April 2020.

WESTERN AGRICULTURE, RESOURCE AND BUSINESS ADVOCATES, LLP

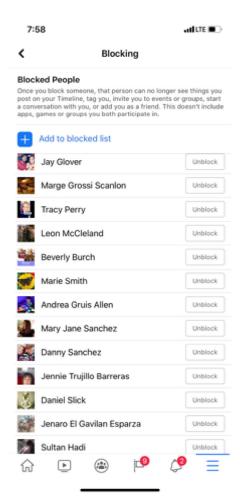
/s/ A. Blair Dunn

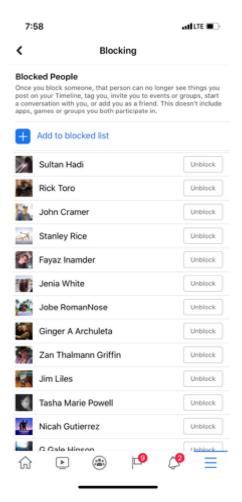
A. Blair Dunn, Esq. 400 Gold Ave SW, Suite 1000 Albuquerque, NM 87102 (505) 750-3060

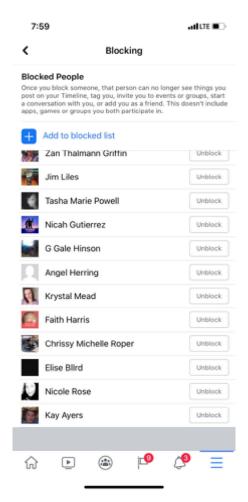
abdunn@ablairdunn-esq.com

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EXHIBIT 1







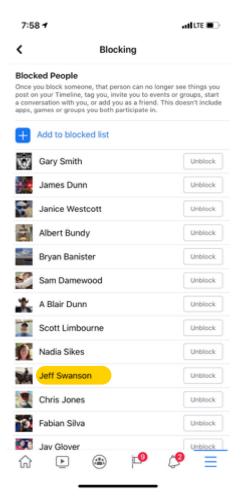


EXHIBIT 2

abdunn@ablairdunn-esq.com

From: meshleman@co.otero.nm.us
Sent: Tuesday, April 14, 2020 4:10 PM

To: 'A. Blair Dunn'
Cc: Sylvia C. Tillbrook

Subject: FW: IPRA REQUEST (OC File#20PRR056)

Attachments: Sylvia C Tillbrook.vcf; Sylvia C Tillbrook2.vcf; Griffin1.png; Griffin2.png; Griffin3.png; Griffin4.png

Dear Mr. Dunn:

This is to respond to your request under the Inspection of Records Act emailed to Sylvia Tillbrook on March 29, 2020. You asked for:

- 1. A copy of the Facebook page evincing the people Couy Griffin on his page had blocked as of today's date.
- 2. Copies of all Facebook messenger messages regarding public business sent or received by Couy Griffin
- 3. Copies of every post including the comments from Couy Griffin's Facebook page regarding county business for the last 12 months.

In response to your first request, four screenshots showing people blocked on Facebook by Commissioner Griffin are attached.

In response to your second request, Commissioner Griffin states that there are no records responsive to your request.

In response to your third request, Commissioner Griffin states he has unblocked you on Facebook and you may review this material online on his Facebook page.

This completes Otero County's response to your request.

Ave atque vale! Michael Eshleman



Michael Eshleman

Otero County Attorney
Otero County Administration Building
1101 New York Avenue
Alamogordo, New Mexico 88310
575-437-7427 (telephone)
866-986-8376 (toll-free)
575-443-2928 (facsimile)
meshleman@co.otero.nm.us

From: Sylvia Tillbrook <stillbrook@co.otero.nm.us>

Sent: Monday, March 30, 2020 10:21 AM

To: 'abdunn@ablairdunn-esq.com' abdunn@ablairdunn-esq.com

Subject: RE: IPRA REQUEST (OC File#20PRR056)

Dear Mr. Dunn,

We will need additional time to respond to you request, until April 14, 2020. Should you have any questions, please do not hesitate to contact me.



From: abdunn@ablairdunn-esq.com <abdunn@ablairdunn-esq.com>

Sent: Sunday, March 29, 2020 9:34 AM

To: Sylvia C Tillbrook < stillbrook@co.otero.nm.us Cc: Tammy Pelletier < warba.llp.tammy@gmail.com stillbrook@co.otero.nm.us cc: Tammy Pelletier < warba.llp.tammy@gmail.com stillbrook@co.otero.nm.us stillbrook@co.otero.nm.us stillbrook@co.otero.nm.us stillbrook@co.otero.nm.us warba.llp.tammy@gmail.com stillbrook@co.otero.nm.us <a href="mailt

Subject: IPRA REQUEST

Ms. Tillbrook,

Pursuant to IPRA please provide:

- 1. A copy of the Facebook page evincing the people Couy Griffin on his page had blocked as of today's date.
- 2. Copies of all Facebook messenger messages regarding public business sent or received by Couy Griffin
- 3. Copies of every post including the comments from Couy Griffin's Facebook page regarding county business for the last 12 months.

Just to be clear - Couy's Facebook page discussed public business yesterday, so there is no question that such records exist. Please also treat this email as a litigation hold letter and be aware that any action to destroy records will be pursued as an adverse inference sanction. It is documented that Couy Griffin has several people blocked and unblocking them would be an example of spoilation.

A. Blair Dunn, Esq. WARBA, LLP 505-750-3060

facebook.com

← Michelle Grisham only further proved her ...



Couy Griffin July 20, 2019 at 7:55 AM -

Michelle Grisham only further proved her cowardice and poor character by not reaching out to our County Sheriff and County Government. She is a partisan hack that only wants to hear things that agree with her and her political agenda. Her insecurity shows from the platform shoes she wears to the people she chooses to meet with. Those that are weak always have the loudest voice!

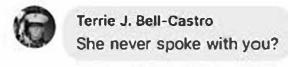


ALAMOGOROONEWS.COM

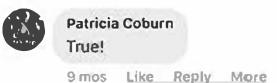
Governor Lujan Grisham visits Alamogordo to promote state's new outdoor recreation division

Comment A Share

15 Shares



9 mos Like Reply More

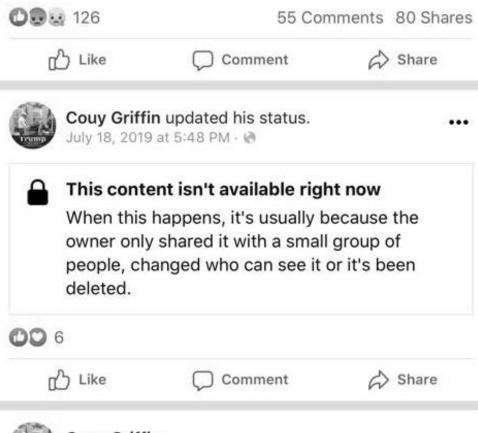


Comment



July 19, 2019 at 8:07 AM - 🚱

Friends and fellow patriots. I need your help. Yesterday I was informed that Governor Michelle Lujan Grisham was traveling to Alamogordo to discuss issues affecting this community. I called her office 5 times to try and find out details and discuss possibilities of meeting with her. Her office staff only put me on hold or took my # down and said they would call me back. Well guess what? I'm still waiting on a call. That's where you come in. Could I ask you to please call her office and ask them to return my call?? After all our efforts in Otero County this is the total disrespect we receive. Please click on the number and call (505) 476-2200 and ask them to call me back. Lets make her phone ring and demand our voices be heard. Please make the call.





I had the blessing of sharing the struggle New Mexico is going thru with an unsecured border. Please read and consider the danger that New Mexico politics is subjecting our great nation to.









Good job Chavez County. Way to give the residents of your county the peace of mind that you are looking out for them. If the county you live in has failed it's people in putting one of these resolutions in place call your county commissioner and demand them to take action. The Counties of N.M. need to stand strong and represent The People. Call your Commissioners.

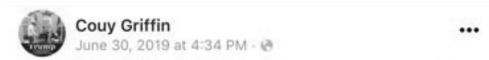


KRQE.COM

Chaves County approves asylum seekers resolution CHAVES COUNTY, N.M. (KRQE)- Another New Mexico county is ta...



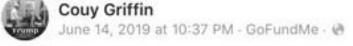










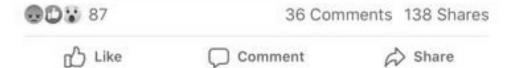


And we love you Vickie!! Thanks for your support!! MAGA!!!



DEMINGHEADLIGHT.COM

Deming City Council allocates \$1 million to shelter asylum seekers





Thank you for taking a stand Sheriff Black. Our Governor is putting our whole state at risk in her attempt to please her political party.

Please call your county commissioners. No matter what county you are in. And demand resolutions to be put in place to safeguard tax payer monies and county resources against illegals/asylum seekers. We must take a stand together. Stand with Otero, Lincoln and Sierra Counties.



LCSUN-NEWS.COM

Lack of law enforcement resources taking its toll on rural New Mexico







Blessed to have my name on this letter. Thanks for including me Mark Cage

Senator Tom Udall

31 Hart Senate Office Building shington DC, 20510

Representative Debra Haaland, District 1 1237 Longworth HOB Washington DC 20515

Representative Ben Lujan, District 3 2323 Rayburn HOB Washington DC, 20515

New Mexico Congressional Delegation,

Senator Martin Heinrich 303 Hart Senate Office Building Washington DC, 20510

Representative Xochitl Torres Small, District 2 430 Cannon HOB Washington DC, 20515

We elected officials in our respective New Mexico counties hereby declare that we believe the southern border immigration crisis has reached the level of an emergency situation.

This emergency must be addressed and it must be addressed immediately. Our communities do not have the resources nor the budgets to handle the massive influx of immigrants we are experiencing and are expected to experience in the very near future. Our scarce resources are in danger of being rapidly depleted to the point that we will be unable to effectively care for our own citizens and our existing homeless populations, many of whom are American veterans.

We, whom you represent, request that you put politics aside and support the President of the United States in his request for the supplemental funding necessary to effectively address this crisis and provide the New Mexicans you serve with the relief we so desperately need. We implore you to protect the border and provide processes that protect immigrants and/or asylum seekers crossing into the United States properly and legally.

It is with our constituent's support and with their well-being in mind that we request you exercise your elected duty to the people whom you serve and act now in this emergency situation to overcome the politics in addressing this humanitarian crisis with no further delay. Please work with the President to give relief and security to both New Mexicans and the immigrants entering through our southern border.

Best regards,

Will Cavin, Chaves County Commission Chair
Jon Henry, Eddy County Commission Chair
Daniel Torrez, Cibola County Commission Chair
Dean Jackson, Lea County Commission Vice Chair
Preston Stone, Lincoln County Commission Chair
John Sweetser, Luna County Commissioner
Couy Griffin, Otero County Commission Chair
Jim Crowley, San Juan County Commissioner
James Paxon, Sierra County Commission Chair

Mike Herrington, Chaves County Sheriff Mark Cage, Eddy County Sheriff Tony Mace, Cibola County Sheriff Corey Helton, Lea County Sheriff Robert Shepperd, Lincoln County Sheriff Kelly Ganaway, Luna County Sheriff David Black, Otero County Sheriff Shane Ferrari, San Juan County Sheriff Glenn Hamilton, Sierra County Sheriff

oc: NM Governor Michelle Lujan Grisham, NM Representative Jim Townsend, NM Senator Gregg Fulfer

Mark Cage May 23, 2019 at 2:45 PM · @

We have expressed our concerns to our congressional delegation.

facebook.com

This is why Otero County Commissioners...



This is why Otero County Commissioners Gerald Matherly and Couy Griffin passed a resolution to protect tax dollars and resources from being spent on illegal aliens/asylum seekers. We need to put our people and our children first.







Wes Robinson

It's only gonna get worse with this invasion we are dealing with.



12 mos Like Reply More



Patricia Coburn

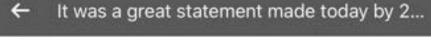
We can't take care of to many others! Need to take care of our own first!!!

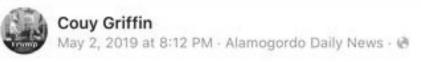


12 mos Like Reply More



Rebecca Scott





It was a great statement made today by 2 of our 3 commissioners here in Otero County.



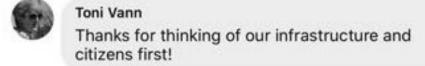
ALAMOGORDONEWS.COM

Otero County does not support housing immigrants in county



06

51 Shares



12 mos Like Reply More







facebook.com

WASHINGTONEXAMINER.COM

New Mexico county asks governor to send in National Guard to deal with migrants







ALAMOGORDONEWS.COM

Otero County declares state of emergency regarding immigration





Honored to be a part of this discussion. Wish it was with the fox herself!



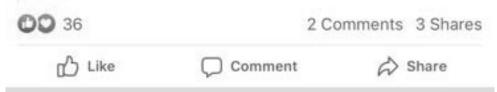




Alamogordo Police Department April 11, 2019 at 2:58 PM -

At this morning's County Commission Meeting, May 4th, 2019 was declared "Otero County Law Enforcement Appreciation Day"! Thanks to all Otero County Law Enforcement agencies for everything you do!

#BackTheBlue #AlamogordoPD #SafeAlamogordo #OCLEAC





facebook.com



"If" the Governor of NM threatens to use ...



Couy Griffin March 27, 2019 at 8:58 PM - @

"If" the Governor of NM threatens to use appropriations control against the counties the people of Otero County can be assured of this. She may take our money but she's not taking our guns!!



ול Like







34 Shares



Rudy K. Jones

If she does.

All merchants should deposit ALL tax revenue in a County Managed account, and hold it until she comes to her senses, or resigns, or gets impeached, or gets voted out.



1 yr Like Reply More



Jolie Hobbs Foster

If she takes the money, maybe the citizens need to stop paying in gross receipts tax, and state income tax to out government.



1yr Like Reply More



Jimmy T LaBaume replied - 7 replies



Jesse Burnett

Horrible lady.... 🗘 1



1 yr Like Reply More



Traci Fuller

Let us know what our Commissioners need the residents of Otero to do to back you up.

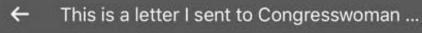


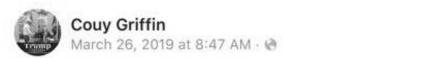
1 yr Like Reply More



Rudy K. Jones

Perhans someone here knows a County





This is a letter I sent to Congresswoman Small:

Dear Congresswoman Small,

I pray that God gives you the humility and wisdom to recognize your position on border security has been wrong. Our County, State, and Nation is under extreme danger right now and it is due to poor decisions regarding policy on our border.

I pray that you don't translate this message into political jargon but you will sincerely consider the effects of an unsecured border.

Please consider the safety, security, and well being of American citizens and your constituents first and foremost.

All wrongs can be made right but it takes humility and strength!

Sincerely, Couy Griffin Otero County Commission

Sent from Outlook





Jeannie Harbour Jones

Couy Griffin. A friend cannot get surgery due to this fact. Weekend before last 800 illegals were sent to Albquerque hospitals!!!!!



1 yr Like Reply More

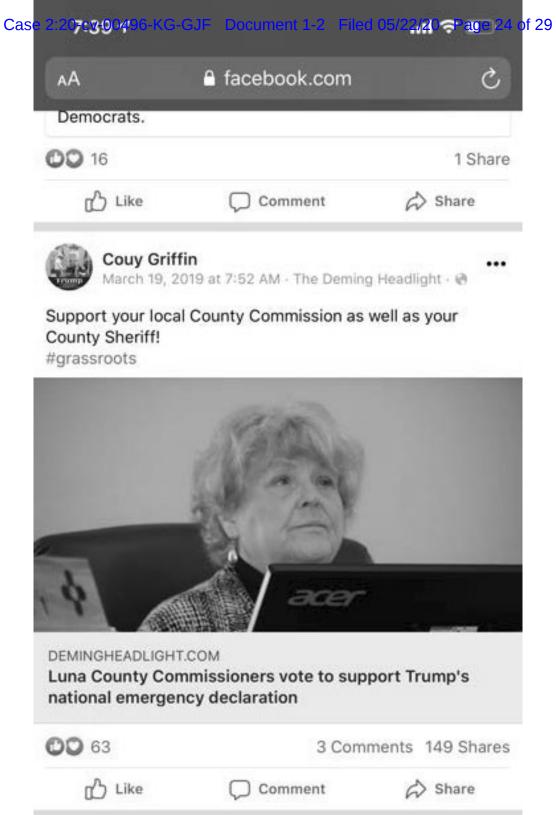


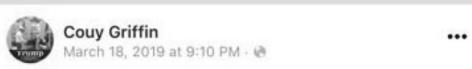
Jeannie Harbou... replied · 4 replies



James Jimbo Williams

I've met wit her twice now and I'm cautiously optimistic that she is listening

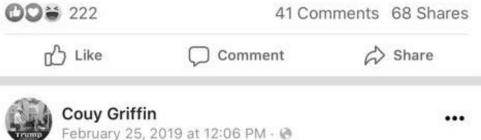




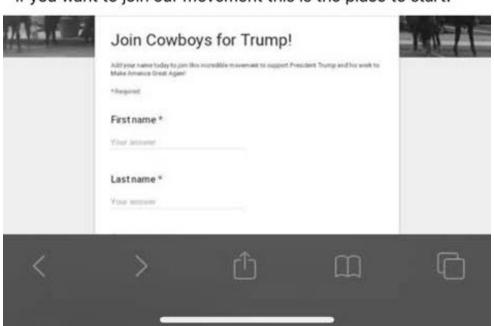
Please check out our new products and support our next ride. Atlanta Georgia, Ride for Southern Pride. Circle the Wagons Tour!







If you want to join our movement this is the place to start!



☐ facebook.com

Share

Like Comment



If you got a few minutes click on the video. And don't make fun of me!!



ODB 916

312 Comments 2.6K Shares





A facebook.com



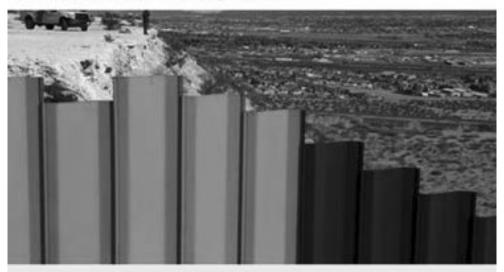
I met with the Otero County attorney yest...



Couy Griffin

January 19, 2019 at 7:19 AM - Silver City Sun News - @

I met with the Otero County attorney yesterday to draft a resolution for our upcoming commission agenda to address the status of Otero County as "sanctuary". If this state bill passes I am not sure how it will legally affect our county but I will fight hard to keep us in line with federal immigration laws and clear of the "sanctuary" status.



SCSUN-NEWS.COM

Proposal could make New Mexico a 'sanctuary state'
Bills in the New Mexico House and Senate would make the state a s...



34 Shares



Matthew Thorburn

I appreciate you & support you Couy. Keep on fighting.

O2

1 yr Like Reply More



Carlos Olivas

Thank you Couy Griffin 🔘 2

1 yr Like Reply More





Couy Griffin

January 10, 2019 at 5:44 AM - @

Good job Hidalgo County. We need the grassroots to come alive and this is a great start. Keep er going!!! Otero County is behind you!!!



Amy Smith Barela ▶ Republican Party of Otero County, New Mexico

January 9, 2019 at 11:18 PM - 🚱

STATE OF NEW MEXICO HIDALGO COUNTY

COMMISSIONERS DARK SHANNON ANTHONY JOEY MORA MARIANNE STEWART



COUNTY MANAGER

December 26, 2018

Please accept this letter as an urgent request for assistance in Southwestern New Mexico. Hidalgo County is in dire need at resources and reinforcements. We feel there is an eminent threat to the safety and welfare of our citizens in Hidalgo County. Resources such as medical, law enforcement, and sanitation are amongst those most needed.

Our Hidalgo County Emergency Medical Services feam consists of 7 full-time employees and 5 volunteers. This team of Emergency Medical Services covers over 5,000 square miles. At the very least we can say they are stretched very thin. The nearest hospital is 50 plus miles from us. The Forward Operating Base located in Antelope Wells is at least one and a half hours away from the nearest hospital. As Emergency Medical Services have a duty to provide proper care, assessment and transport to patients; our resources are very limited. Please send emergency medical services to assist us with the overwhelming number of immigrants coming in daily.

Our Border Patrol work diligently to assist the County and its citizens with anything that is in the best interest of our County. With the amount of immigrants coming in daily, they are stretched thin as far as resources go.

Sanitation is a major concern for Hidolgo County, as well. Currently a local vendor is providing porta-patties to Antelope Wells FOB, the vendor is very concerned with the unsanitary manner they are being utilized. She is concerned for her employees, immigrants and anyone etse who may come into contact with them. Individuals who use the port-a-patties refuse to dispose of toilet paper, etc. they instead leave it in a pile next to the toilet. The smell is hariffic and the thought of any type of disease that may now be exposed. Would the military be able to provide latrines?

Our citizens who live in Hidalgo County near the border, more specifically in Antelope Wells are not safe any longer. They encounter up to 30 or more immigrants daily in their own yards. The only thing between our citizens and our border is a barb wire fence. Thankfully, at this time the encounters have not been violent. These issues need to be addressed at the state and national levels. We are begging for your assistance to get this situation under control before it gets any worse.

Sincerely.

) ISAA (TADA Taha Green

Hidalgo County Manager

NM Cattle Growers Association January 9, 2019 at 10:26

PM · @

Hildago County in New Mexico has declared an emergency. It is southernmost county of New Mexico. It is the boothee of New Mexico.